

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

TROY MURPHY,

Plaintiff,

v.

**2:07 CV 23
(Maxwell)**

**FCI GILMER;
UNITED STATES DEPARTMENT OF JUSTICE/
FEDERAL BUREAU OF PRISONS;
UNKNOWN MAIL ROOM EMPLOYEES OF FCI;**

Defendants.

ORDER

It will be recalled that on March 19, 2007, *pro se* Plaintiff Troy Murphy initiated the above-styled civil action by filing a civil rights complaint pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971). In addition, the Plaintiff's Complaint alleged a claim pursuant to the Federal Tort Claims Act.

It will further be recalled that the case was referred to United States Magistrate Judge James E. Seibert in accordance with Rule 83.02 of the Local Rules of Prisoner Litigation Procedure and 28 U.S.C. §§ 1915(e)(2) and 1915(A).

On April 11, 2008, Magistrate Judge Seibert entered a Report And Recommendation wherein he recommended that the Plaintiff's Bivens claim against the United States Department of Justice/Federal Bureau of Prisons and FCI Gilmer be dismissed with prejudice for failure to name the proper Defendants; that the Plaintiff's Bivens claim against the unknown mail room employees of FCI Gilmer be dismissed

without prejudice for failure to exhaust administrative remedies; and that the Plaintiff's Federal Tort Claims Act claim be dismissed with prejudice for failure to state a claim.

In his Report And Recommendation, Magistrate Judge Seibert provided the parties with ten (10) days from the date of said Report And Recommendation in which to file objections thereto and advised the parties that a failure to timely file objections would result in the waiver of their right to appeal from a judgment of this Court based upon said Report And Recommendation.

On April 30, 2008, the Plaintiff filed a Reply to Magistrate's Recommendation wherein he advised the Court that he wished to pursue his administrative remedies and would resubmit his Bivens Complaint once he had done so.

Upon consideration of Magistrate Judge Seibert's April 11, 2008, Report And Recommendation, and the Plaintiff having indicated that he does, in fact, desire to pursue his administrative remedies, it is

ORDERED that the Report And Recommendation entered by United States Magistrate Judge James E. Seibert April 11, 2008 (Docket No. 24) be, and the same is hereby, **ACCEPTED** in whole and this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Plaintiff's Bivens claim against Defendants United States Department of Justice/Federal Bureau of Prisons and FCI Gilmer be, and the same is hereby, **DISMISSED with prejudice** for failure to name the proper Defendants. It is further

ORDERED That the Plaintiff's Bivens claim against the unknown mail room

employees of FCI Gilmer be, and the same is hereby, **DISMISSED without prejudice** for failure to exhaust administrative remedies. It is further

ORDERED that the Plaintiff's Federal Tort Claims Act claim be, and the same is hereby, **DISMISSED with prejudice** for failure to state a claim. It is further

ORDERED that the Clerk of Court shall enter judgment for the Defendants. It is further

ORDERED that, should the Plaintiff desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within sixty (60) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court of Appeals for the Fourth Circuit.

The Clerk of Court is directed to transmit copies of this Order to the *pro se* Plaintiff and to any counsel of record.

ENTER: December 3 , 2009

 /S/ Robert E. Maxwell
United States District Judge